IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5782 OF 2005

Aslam Jusab Sikwani ...Applicant
Vs.
Yusuf Amir Baig & Ors. ...Respondents

Mr. Ganesh Gole for the Applicant.
Mr. Rajendra Rathod for the Respondent No.1.
Ms M.H. Mhatre, A.P.P. for the Respondent No.2-State.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 30, 2005.

JUDGMENT:

1. Heard the Advocate appearing for the Applicant, the Advocate appearing for the Respondent No.1 and the learned A.P.P. for the State. The prayer in the Application is for cancellation of Anticipatory Bail granted in favour of the Respondent No.1 by the order dated 22nd August, 2005 passed by the learned 7th Adhoc Additional Sessions Judge, Sewree, Mumbai.

2. With a view to appreciate the submissions made by the Advocates appearing for the parties, it will be necessary to refer to the facts of the case in brief. The Applicant is the first informant. On the basis of the complaint made by the Applicant, an offence was registered against the Respondent No.1 under sections 420, 465, 467, 468 and 471 of the Indian Penal Code with Dongri Police Station, Mumbai. The case of the Applicant is that he alongwith his wife knew the

Respondent No.1 for a period of four years prior to the filing of the complaint. It is alleged that the Respondent No.1 is running a juice centre and is looking after the maintenance of Sharfuddin Baba Dargah. In the year 2004, the Applicant and his wife visited the said Dargah. At that time, they met the Respondent No.1. The Respondent No.1 represented that due to shortage of funds, electricity bills of the electricity connection to the Dargah could not be cleared. The Respondent No.1 requested the Applicant and his wife to make monetary help so that the electricity bills could be paid. Relying on the representation made by the Respondent No.1, the Applicant called the Respondent No.1 to his shop. Accordingly, the Respondent No.1 came to his shop and represented that a sum of Rs.70,000/- was payable towards the outstanding electricity bills of the Dargah. The Applicant informed him that he was not in a position to pay the entire amount at a time. The Respondent No.1 suggested that the amount can be paid by six instalments. The Applicant and his wife agreed to pay the amount by instalments. As the Applicant and his wife were likely to be busy in the election of Lok Sabha, the Applicant issued six post dated cheques in the sum of Rs.12,666/- drawn on his account in the Syndicate Bank. Case of the Applicant is that he

mentioned the amounts on the said six cheques and signed the cheques without mentioning name of the payee.

3. According to the case of the Applicant, the first cheque which was dated 01st October, 2004 was attempted to be encashed by the Respondent No.1 by writing his name on the cheque. When the cheque came to the Bank for clearance, the Applicant's servant was present there and therefore, on being informed by his servant, the Applicant stopped payment under the said cheque. The Applicant and his wife sought explanation from the Respondent No.1. According to the Applicant, the Respondent No.1 tendered an apology and promised to return the cheques. According to the case of the Applicant, instead of returning the cheques, the Respondent No.1 encashed the cheque dated 01st November, 2004 by writing his name on the cheque. According to the Applicant, the Respondent No.1 used the cheque dated 01st March, 2005 issued by the Applicant by changing the amount mentioned in the cheque to Rs.03,12,666/- from Rs.12,666/-. The said cheque was returned dishonoured as sufficient amount was not available to the credit of the Applicant in his account. When this fact was informed to the Applicant by the staff members of the Bank, he

contacted the Respondent No.1. According to the Applicant instead of tendering apology, the Respondent No.1 filed the complaint against the wife of the Applicant under section 138 of the Negotiable Instruments Act, 1881. The learned Additional Sessions Judge held that custodial interrogation of the Respondent No.1 was not necessary and therefore, he granted Anticipatory Bail subject to condition of attendance on every Thursday between 04.00 p.m. to 06.00 p.m. until further orders.

4. Shri Gole appearing for the Applicant submitted that the Respondent No.1 has criminal antecedents. He submitted that atleast two cases have been registered against the Respondent No.1 at Azad Maidan Police Station in the year 1996 and in the year 2002 for the offences punishable under sections 465, 467, 471 and 420 of the Indian Penal Code. He submitted that the Investigating Officer was made aware about the cases registered against the Respondent No.1 but, he did not bring the said fact to the notice of the Sessions Court. He submitted that in the Application for Anticipatory Bail filed by the Respondent No.1, he misled the Sessions Court by alleging that he had a clean past record. He submitted that as material facts were suppressed by

the Respondent No.1 and as the Investigating Officer did not bring all material before the Sessions Court, a case is made out for cancelling the Anticipatory Bail. The learned Advocate appearing for the Respondent No.1 submitted that the offence has been registered belatedly much after filing of complaint by the Respondent No.1 against the wife of the Applicant under section 138 of the Negotiable Instruments Act, 1881 on the basis of the same cheques which are subject matter of F.I.R. registered at the instance of the Applicant. He submitted that there was no misrepresentation of the facts made by the Respondent No.1. He submitted that power to cancel the bail should be exercised sparingly and not as matter of course.

5. The learned A.P.P. relied upon an affidavit of Dinesh Manikrao Desai, Inspector of Police attached to Dongri Police Station. In the said affidavit, he has tendered an apology for not placing the antecedents of the Respondent No.1 before the Sessions Court.

6. I have considered the submissions. It is not in dispute that the cheque dated 01st March, 2005 was signed by the wife of the Applicant. The allegation

of the Applicant is that in the cheque the amount mentioned was 12,666/-. However, the Respondent No.1 added the figure '3' thereby committing an offence. It is pertinent to note that a notice was issued by the Advocate for the Respondent No.1 on 22nd April, 2005 to the wife of the Applicant. The said notice was under section 138 of the Negotiable Instruments Act, 1881 regarding dishonour of the same cheque allegedly in the sum of Rs.03,12,666/-. The notice was replied by the Advocate for the wife of the Applicant on 05th May, 2005. In the said reply there is mere denial of the allegations made in the notice. No case is made out in the said reply regarding handing over of six post dated cheques to the Respondent No.1 for clearing the electricity bills of Dargah. There is no allegation made regarding misuse of the cheques. The complaint under section 138 of the said Act of 1881 was filed by the Respondent No.1 on 22nd May, 2005 and the F.I.R. was registered at the instance of the Applicant on 11th July, 2005.

7. As regards the criminal antecedents of the Respondent No.1, the Investigating Officer has filed an affidavit and has tendered apology. In so far as the criminal antecedents are concerned, there are two offences registered at Azad Maidan Police Station in

the year 1996 and in the year 2002. The third offence registered against the Applicant is in the year 1996 under section 379 of the Indian Penal Code. Admittedly, in the said offence, the police have filed the report claiming 'B' Summary as the complaint was found to be false. There are two complaints registered at Azad Maidan Police Station in the year 1998 against the Respondent No.1 alleging the commission of non-cognizable offence. In the year 2001, an offence was registered under section 33(w) of the Bombay Police Act, 1951. It is true that the Respondent No.1 should have disclosed these facts in the Application for Anticipatory Bail. In my view, looking to the factual aspect which is referred to above, the Anticipatory Bail cannot be cancelled only on the ground that the criminal antecedents were not disclosed. It is well settled that Anticipatory Bail cannot be cancelled as a matter of course.

8. The complaint under section 138 of the said Act of 1881 filed by the Respondent No.1 relates to the same cheque and the complaint is filed more than two months prior to the registration of the F.I.R. at the instance of the Applicant. There is nothing on record to show that the Respondent No.1 has not complied with the conditions imposed while granting

Anticipatory Bail regarding the attendance at the Police Station. In the affidavit in reply filed by the Respondent No.1, it is stated that the case regarding offence punishable under section 33(w) of the Bombay Police Act was dropped under the order passed by the learned Magistrate on 28th May, 2001 as the Applicant produced the original licence before the learned Magistrate.

9. In my view, no case is made out for cancellation of Anticipatory Bail and the Application deserves to be rejected.

10. Hence, I pass the following order:

: O R D E R :

i) Application is rejected.

JUDGE